

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

NICOLAS MARQUEZ, #1451935	§	
VS.	§	CIVIL ACTION NO. 9:09cv71
NATHANIEL QUARTERMAN, ET AL.	§	

MEMORANDUM OPINION AND
ORDER OF DISMISSAL

Plaintiff Nicolas Marquez, previously a prisoner confined at the Polunsky Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was transferred to the undersigned with the consent of the parties pursuant to 28 U.S.C. § 636(c).

The present lawsuit was dismissed on March 18, 2010. On September 6, 2011, the Fifth Circuit reversed in part and remanded the case for further consideration.

On October 25, 2010, mail sent to the Plaintiff at his last known address was returned with the notation that he was no longer there. After receiving the remand order, the Court contacted the prison and was notified that the Plaintiff was released on September 24, 2010. Both the Fifth Circuit and this Court has his last known address as being the Polunsky Unit. The Plaintiff has not provided the Court with a new address and his whereabouts are unknown.

The exercise of the power to dismiss for failure to prosecute is committed to the sound discretion of the Court and appellate review is confined solely in whether the Court's discretion was abused. *Green v. Forney Engineering Co.*, 589 F.2d 243 (5th Cir. 1979); *Lopez v. Aransas County*

Independent School District, 570 F.2d 541 (5th Cir. 1978). Not only may a district court dismiss for want of prosecution upon motion of a defendant, but it may also, *sua sponte*, dismiss an action whenever necessary to achieve the orderly and expeditious disposition of cases. *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir. 1980). The present case should be dismissed. It is therefore

ORDERED that the complaint is **DISMISSED** without prejudice. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **1** day of **November, 2011**.


JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE